

THE FBI WENT TO MICROSOFT, NOT TRUMP ORGANIZATION, FOR EMAILS INCRIMINATING INDIVIDUAL-1

I'm working on a post showing how slow the investigation into Donald Trump and his associates was, contrary to the President's squeals. That led me to realize something about this August 1 search warrant application for Michael Cohen's Trump Organization email.

Trump Organization used Microsoft to host their email.

54. On or about July 14,2017, the Federal Bureau of Investigation sent a request, pursuant to 18 U.S.C. § 2703(f), to Microsoft, requesting that Microsoft preserve all content for all email accounts associated with the domain "trumporg.com," which included the Target Account.

55. On or about July 20,2017 and again on or about July 25,2017,in response to a grand jury subpoena, Microsoft confirmed that the Target Account was an active account associated with the domain trumporg.com. Microsoft also provided records indicating that email accounts associated with the domain "trumporg.com" are being operated on a Microsoft Exchange server. According to publicly available information on Microsoft's website, Microsoft hosts emails for clients on Microsoft Exchange servers, while allowing customers to use their own domain (as opposed to the publicly available email domains supplied by Microsoft, such as hotmail.com). According to information

supplied by Microsoft, the domain trumporg.com continues to operate approximately 150 active email accounts through Microsoft Exchange, meaning that data associated with trumporg.com still exists on Microsoft's servers.

[snip]

62. On or about June 21, 2017, the Federal Bureau of Investigation sent a request, pursuant to 18 U.S.C. § 2703(f), to Microsoft, requesting that Microsoft preserve all content associated with the Target Account.

That means Microsoft – and not (just) Trump Organization – controlled access to these accounts.

This is something that has long been an unrecognized problem. If the government wants your email and your business or university has Microsoft or Gmail host email for them, the tech giants will get and respond to a law enforcement request, not the entity that might make privilege or First Amendment legal challenges to the subpoena. For example, the government would have gotten Xiaoxiang Xi and Ally Watkins' Temple University email from Google, not the University, preventing both from making a First Amendment challenge to the warrant.

Microsoft sued over the sheer number of gags on such subpoenas in 2016; few people realized that they were concerned primarily about businesses like Trump Organization, not individual customers. That suit settled on October 24, 2017 after DOJ agreed to provide Microsoft more leeway to notice its customers.

But that agreement would have come too late for Michael Cohen and anyone else at Trump Organization who might have been investigated by DOJ. Since June 21, 2017, Cohen's emails were preserved, and since July 14, 2017 – just after the June 9 meeting arranged via what appears to be Don Jr's Trump Organization email became

public – all Trump Organization emails have been preserved.

In DOJ's opposition to Michael Cohen's efforts to get a restraining order on the materials seized in the April 9, 2018 raid on him, there was a redacted reference suggesting that some materials may have gotten destroyed.

warrants. Furthermore, in the course of its investigation, the USAO-SDNY has learned that

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] As a result, absent a search warrant, these records could have been deleted without record, and without recourse for the law enforcement.⁷

Mueller didn't subpoena documents from Trump Organization directly until March 2018. So if they discovered documents via email searches direct from Microsoft that were withheld in that March subpoena – such as the emails that Cohen received on Trump Tower Moscow – it might explain this redaction.

This is the kind of thing that Trump might make a big stink about, if he ever figures it out (or if it gets Trump Organization lawyer Alan Garten in trouble for blowing off subpoenas – they were already non-responsive in response to the May HPSCI subpoena). But it's the kind of thing that businesses and universities everywhere are exposed by.

As I disclosed last July, I provided information to the FBI on issues related to the Mueller investigation, so I'm going to include disclosure statements on Mueller investigation posts from here on out. I will include the disclosure whether or not the stuff I shared with the FBI pertains to the subject of the post.